

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB-1096X

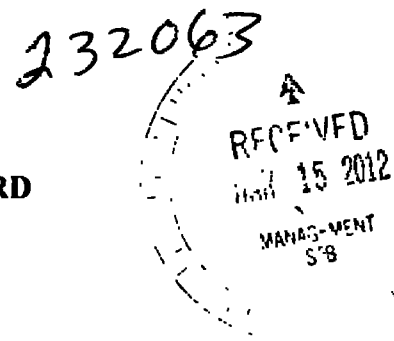
**GEORGIA DEPARTMENT OF TRANSPORTATION
— ABANDONMENT —
IN ATLANTA, FULTON COUNTY, GEORGIA
— PETITION FOR EXEMPTION —**

**PETITION FOR EXEMPTION FROM CONDITIONS GOVERNING
OFFERS OF FINANCIAL ASSISTANCE AND PUBLIC USE**

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**PETITION OF GEORGIA DEPARTMENT OF TRANSPORTATION
FOR EXEMPTION FROM 49 U.S.C. §§10904 AND 10905**

Georgia Department of Transportation (“**GDOT**”) hereby submits this Petition for Exemption From 49 U.S.C. §§ 10904 and 10905, the statutory provisions relating to Offers of Financial Assistance and Public Use Conditions (“**Petition for Exemption**”). This Petition is being filed simultaneously and in connection with GDOT’s Verified Petition for Exemption pursuant to 49 C.F.R. § 1152. Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights in the above-captioned proceeding (the “**Abandonment Petition**”). GDOT is submitting the Abandonment Petition to effect the abandonment of any remaining common carrier obligations on a 3.12 mile line of railroad in Atlanta, Fulton County, Georgia, from Milepost 469.15 to Milepost 472.27 (the “**West End Property**”). For the reasons set forth in detail below, GDOT respectfully requests that the Board exempt the abandonment of the subject line from the provisions of 49 U.S.C. § 10904 (Offer of Financial Assistance or “**OFA**” procedures) and 49 U.S.C. § 10905 (public use conditions).

BACKGROUND

GDOT purchased the West End Property in 2001 from CSX Transportation, Inc. (“CSXT”).¹ There has been no rail service nor any demand for rail service over the subject segment for at least ten years. Tracks in the corridor were removed many years ago and extensive overgrowth and illegal dumping have occurred on the segment. GDOT seeks authority to abandon the West End Property in order, in part, to facilitate the development of the Atlanta BeltLine, a comprehensive economic development effort that combines transit, green space, trails and new commercial, residential and public facility development along a 22-mile ring of historic rail segments encircling Atlanta’s urban core. The Atlanta BeltLine master plan anticipates that the West End Property will be used to develop a transit corridor to accommodate light rail or buses in a fixed guideway along with a trail and adjacent uses designed to support and be supported by the variety of available transportation modes.

The Atlanta BeltLine is one of the most wide-ranging urban redevelopment projects underway in the U.S. and will provide a network of linked uses and opportunities for living, employment, entertainment and recreation. Although the subject segment is no longer viable as a freight rail line because of physical and fiscal constraints, the existing corridor can be expeditiously put to use to create substantial future public benefits if the rail use is formally abandoned and the abandonment is exempt from offers of financial assistance and the imposition of public use conditions.

ARGUMENT

Where a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service, the Board will grant exemptions from the requirements of

¹ As set forth in detail in the Abandonment Petition, STB authority for GDOT’s acquisition of the West End Property will become effective as of March 18, 2012. *Georgia Dep’t of Transportation – Acquisition Exemption – CSX Transportation, Inc. in Fulton Co, GA*, Finance Docket No. 35591 (Service Date February 27, 2012).

49 U.S.C. §§ 10904 and 10905. *See, e.g., K & E R. Co. – Abandonment Exemption – In Alfalfa, Garfield, and Grant Cos., OK, and Barber Cos., KS*, STB Docket No. AB-480X (Service Date December 31, 1996), *slip op.* at 4-5. The circumstances here fully warrant an exemption from OFA and public use requirements.

A. Exemption from OFA Requirements Would Be Consistent with Board Precedent

In circumstances like those presented here, where there are no shippers on the line and none have sought to use the line for many years, and where a public agency proposes a public use of the line, Board precedent supports the exemption GDOT requests. The OFA provisions are intended to permit a party genuinely interested in ensuring the continued availability of rail service on a line that would otherwise be abandoned. The OFA proponent may either acquire that line for continued rail service, or subsidize the continuing operations. Exemptions from 49 U.S.C. § 10904 have been granted when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. *See, e.g., Georgia Southwestern Railroad, Inc. – Abandonment Exemption – In Barbour County, AL*, STB Docket No. AB-1000X (Service Date April 25, 2007) (no shippers in over seven years; right-of-way to be used for public trail); *CSX Transportation, Inc.—Abandonment Exemption—in Pike County, KY*, STB Docket No. AB-55 (Sub-No. 653X) (Service Date September 13, 2004) (no existing shippers, right-of-way to be used for highway expansion); *Norfolk Southern Ry. Co. Abandonment Exemption – In Washington County, NC*, STB Docket No. AB-290 (Sub-No. 248X) (“*Washington County*”) (single remaining shipper had moved shipments to other facility; right-of-way needed for improvements to electric distribution facilities owned by power company).

Where an abandonment was necessary to support urban redevelopment projects, the Board has granted exemptions from the OFA requirements even over the protests of putative shippers. *See, e.g., Norfolk and Western Railway Company—Abandonment Exemption—in Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X) (Service Date May 13, 1998) (petition for exemption from the OFA process granted in the face of arguments by two potential shippers that there was an overriding public need for transportation service because no traffic had moved on the line for the prior 11 years, shippers had viable transportation alternatives available, and the right-of-way was needed for multi-purpose municipal improvements, including a new professional football stadium); *The Kansas City Southern Ry. Co. – Abandonment Exemption – In Jackson County, MO*, STB Docket No. AB-103 (Sub-No. 17X) (Service Date July 27, 2004) (shippers along line had ceased operation and right-of-way was needed to facilitate municipal economic development and urban revitalization projects). Additionally, the Board has acknowledged that a mass transit operation on its own is not only a valid public purpose, but an important one that can provide a justification for exempting a proposed abandonment from OFA requirements. *Los Angeles County Metropolitan Trans. Auth. - Abandonment Exemption – In Los Angeles County, CA*, AB-409 (Sub-No. 5X) (Service Date July 17, 2008), *slip op.* at 5. The Board has also recognized that permitting an OFA to proceed would preclude the planned use of a rail line by a transit agency, thus frustrating “the very purpose of the abandonment and discontinuance.” *See Missouri Pacific Railroad Co. – Abandonment – in Harris County, TX*, STB Docket No. AB-3 (Sub-No. 105X) (Service Date December 22, 1992), *slip op.* at 3.

Here, Atlanta Beltline, Inc. intends to use the West End Property for the development of a public transit corridor as part of the larger Atlanta BeltLine project targeted at spurring economic

development. The facts and circumstances supporting GDOT's requested exemption from OFA conditions are consistent with those the Board has previously accepted as the basis for such an exemption. There is no freight service to be preserved and the abandonment will clear the path for planned public uses to be established. There are no shippers on the corridor that is the subject of this abandonment proceeding. In the 10 years since it acquired the line, GDOT has received no requests for service and no freight has moved over this line for over ten years, since CSXT's transfer of the property to GDOT.

Because the facts and circumstances in this case are consistent with those the Board has previously relied on to grant an exemption from OFA conditions, the Board should exempt CSX's abandonment request from the application of the OFA requirements.

B. In View of the Public Interest and Intended Use of the West End Property, Exemption from Public Use Requirements Would Be Consistent with Board Precedent

Where there is no overriding public need for continued rail service, a right-of-way is needed for a valid public purpose and is already owned by a public entity, the Board will grant exemptions from the requirements governing the imposition of public use conditions. *See, e.g., Washington County, slip op.* at 2, 4. The Board should exempt GDOT from the imposition of public use conditions because GDOT seeks abandonment of the West End Property in order to devote the corridor to a valid and compelling public purpose through development for transit and other legitimate public purposes by the quasi-public entity, Atlanta Beltline, Inc.

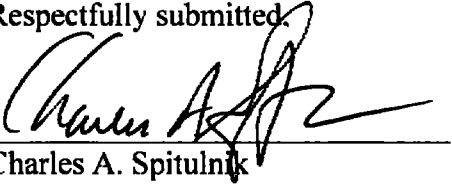
Here, the subject segment is only 3.12 miles long and has seen no traffic for many years. Once GDOT receives and exercises authority to abandon the common carrier obligations of this segment, Atlanta Beltline, Inc. will use the abandoned segment for uses directly related to, and in support of, the development of public transit, a trail, recreation, and economic development

projects, a host of compelling public uses. Accordingly, the facts in this proceeding clearly justify an exemption from the public use requirements as well.

CONCLUSION

WHEREFORE, in light of the foregoing, GDOT respectfully requests that the Board exempt the abandonment transaction from the provisions of 49 U.S.C. § 10904 (OFA procedures) and 49 U.S.C. § 10905 (public use conditions).

Respectfully submitted,



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Certificate of Service

I hereby certify that on this 15th day of March, 2012, I caused to be served a copy of the foregoing PETITION FOR EXEMPTION FROM 49 U.S.C. §§10904 and 10905 to be served by first class mail, postage prepaid, upon all parties of record in this proceeding.


Allison I. Fultz